

**CITIZENSHIP DETERMINATION OF
INCARCERATED INDIVIDUALS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions related to determining the citizenship of an incarcerated person by a law enforcement agency to assist a court in deciding whether the individual may not be admitted to bail.

Highlighted Provisions:

This bill:

- ▶ provides that a law enforcement agency shall determine the country of citizenship of a person brought to the agency for incarceration;

- ▶ provides that if a law enforcement agency determines the incarcerated person is not a United States citizen, it shall transmit that information to the court and prosecuting agency for the purpose of making a determination that the person may not be admitted to bail if there is probable cause to believe the person has entered or remained in the United States illegally and is likely to flee the jurisdiction of the court if released on bail; and

- ▶ provides criteria for the court to consider in making a determination that a person has entered or remained in the United States illegally and is not entitled to bail.

Monies Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

ENACTS:

77-20-1.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-20-1.5** is enacted to read:

77-20-1.5. Processing arrested persons -- Citizenship determination -- Denial of bail.

(1) A law enforcement agency shall, within 24 hours after a person is brought to the agency for incarceration, inquire of the person and determine the person's country of citizenship.

(2) If the law enforcement agency determines the person is not a United States citizen, it shall:

(a) notify the person's country of citizenship of the person's detention:

(i) if the person does not waive notification; or

(ii) if the person's country of citizenship requires notification regardless of the person's waiver of notification;

(b) document the notification to the person's country of citizenship and any waiver of notification; and

(c) transmit the information obtained under this section to the court and prosecuting agency for the purpose of making a determination that the person may not be admitted to bail if the proof is evident or the presumption great that:

(i) the person is guilty of the offense charged;

(ii) the offense charged is a felony; and

(iii) there is probable cause to believe that the person has entered or remained in the United States illegally and that the person is likely to flee the jurisdiction of the court if released on bail.

(3) A court shall consider the following in making a determination under Subsection (2)(c)(iii) that a person has entered or remained in the United States illegally and that the person is not entitled to bail under Subsection 77-20-1(1)(c):

59 (a) whether a hold has been placed on the arrested person by the United States
60 Immigration and Customs Enforcement;
61 (b) any indication by a law enforcement agency that the person is in the United States
62 illegally;
63 (c) whether an admission by the arrested person has been obtained by the court or a law
64 enforcement agency that the person has entered or remained in the United States illegally;
65 (d) any information received from a law enforcement agency under Subsection (2)(c);
66 (e) any evidence that the person has recently entered or remained in the United States
67 illegally; and
68 (f) any other relevant information that is obtained by the court or that is presented to
69 the court.

Legislative Review Note
as of 1-15-08 10:26 AM

Office of Legislative Research and General Counsel